

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Petitioner,
13 v.
14 JOSE DE JESUS FERNANDEZ,
15 Respondent.

Case No.: 12-CR-4256-L

**ORDER DENYING MOTION FOR
MODIFICATION OF TERM OF
IMPRISONMENT PURSUANT TO
18 U.S.C. § 3582(C)(2)**

16
17 On February 17, 2015, Petitioner Jose De Jesus Fernandez (“Petitioner”),
18 proceeding *pro se*, filed a motion for relief of sentence pursuant to 18 U.S.C. §
19 3582(c)(2). Petitioner’s motion is based upon retroactive Amendment 782 of the United
20 States Sentencing Guidelines that pertain to drug trafficking offenses which became
21 effective November 1, 2014. The Government filed an opposition to the motion. For the
22 reasons set forth below, Petitioner’s motion is **DENIED**.

23 Petitioner pled guilty to Importation of Methamphetamine in violation of 21 U.S.C.
24 §§ 952 and 960. On May 28, 2013, this Court sentenced Petitioner to 60 months in the
25 custody of the Bureau of Prisons for one count of Importation of Methamphetamine, the
26 mandatory minimum sentence required.
27
28

1 Amendment 782 reduces the base offense level for drug trafficking offenses in §
2 2D1.1(c) of the Sentencing Guidelines. *See* Amendment 782, Supplement to Appendix
3 C, Amendments to the Guidelines Manual. A motion for reduction of sentence under §
4 3582(c)(2) “is simply a vehicle through which appropriately sentenced prisoners can urge
5 the court to exercise leniency to give [them] the benefits of an amendment to the
6 guidelines.” *United States v. Townsend*, 98 F.3d 510, 513 (9th Cir. 1996) (quoting
7 *United States v. Whitebird*, 55 F.3d 1007, 1011 (5th Cir. 1995) (internal quotation marks
8 omitted)). However, a mandatory minimum sentence may not be reduced by a district
9 court under section 3582 because the guideline amendments do not reduce such
10 sentences, instead, court are only authorized to reduce sentences “based on a sentencing
11 range that has subsequently been lowered by the Sentencing Commission.” *United*
12 *States v. Sykes*, 658 F.3d 1140, 1148 (9th Cir. 2011).

13 Petitioner was sentenced to the mandatory minimum of 60 months based on the
14 amount of controlled substance, and his two previous criminal convictions. 21 U.S.C.
15 § 841. Therefore, Petitioner’s sentence cannot be reduced pursuant to Amendment 782.
16 Petitioner’s motion for a reduction in his sentence is **DENIED**.

17 **IT IS SO ORDERED.**

18
19 Dated: December 15, 2017

20
21 
22 Hon. M. James Lorenz
23 United States District Judge

24 COPIES TO:

25 PETITIONER

26 U.S. ATTORNEY’S OFFICE
27
28